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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 15, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LETICIA CARTER,

Plaintiff,

v.

BENTON COUNTY, a Washington
State municipal corporation; DOES 1-
100, employees of Benton County; and
CORPORATIONS XYZ 1-100,

Defendants.

No. 4:24-CV-05050-MKD

STIPULATED PROTECTIVE
ORDER

ECF No. 11

Before the Court is the Parties' Stipulated Protective Order. ECF No. 11.

The parties request entry of a stipulated protective order. The Court has reviewed the record and finds good cause to enter the proposed order.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Protective Order, **ECF No. 11**, is **GRANTED**.
2. The following Protective Order shall apply to this case:

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: Plaintiff’s medical records and bills, Plaintiff’s bank account, financial information, and tax records, and sensitive employee files and records.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of

1 confidential material; and (3) any testimony, conversations, or presentations by
2 parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover
4 information that is in the public domain or becomes part of the public domain
5 through trial or otherwise.

6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. A receiving party may use confidential
8 material that is disclosed or produced by another party or by a non-party in
9 connection with this case only for prosecuting, defending, or attempting to
10 settle this litigation. Confidential material may be disclosed only to the
11 categories of persons and under the conditions described in this agreement.
12 Confidential material must be stored and maintained by a receiving party at
13 a location and in a secure manner that ensures that access is limited to the
14 persons authorized under this agreement.

15 4.2 Disclosure of “CONFIDENTIAL” Information or Items.

16 Unless otherwise ordered by the court or permitted in writing by the
17 designating party, a receiving party may disclose any confidential material
18 only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the

“Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A),¹ to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the

¹ The parties refer to Local Civil Rules that this Court does not have. The Court presumes the parties make reference to the Western District of Washington's Local Rules. For the purposes of this order only, and limited to the specific rules cited, the Western District's Local Rules are incorporated herein.

1 meet and confer process, the designating party must identify the basis for
2 sealing the specific confidential information at issue, and the filing party
3 shall include this basis in its motion to seal, along with any objection to
4 sealing the information at issue. Local Civil Rule 5(g) sets forth the
5 procedures that must be followed and the standards that will be applied
6 when a party seeks permission from the court to file material under seal. A
7 party who seeks to maintain the confidentiality of its information must
8 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the
9 party filing the motion to seal. Failure to satisfy this requirement will result
10 in the motion to seal being denied, in accordance with the strong
11 presumption of public access to the Court's files.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for
14 Protection. Each party or non-party that designates information or items for
15 protection under this agreement must take care to limit any such designation
16 to specific material that qualifies under the appropriate standards. The
17 designating party must designate for protection only those parts of material,
18 documents, items, or oral or written communications that qualify, so that
19 other portions of the material, documents, items, or communications for

1 which protection is not warranted are not swept unjustifiably within the
2 ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited.
4 Designations that are shown to be clearly unjustified or that have been made
5 for an improper purpose (e.g., to unnecessarily encumber or delay the case
6 development process or to impose unnecessary expenses and burdens on
7 other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items
9 that it designated for protection do not qualify for protection, the designating
10 party must promptly notify all other parties that it is withdrawing the
11 mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise
13 provided in this agreement (see, e.g., second paragraph of section 5.2(a)
14 below), or as otherwise stipulated or ordered, disclosure or discovery
15 material that qualifies for protection under this agreement must be clearly so
16 designated before or when the material is disclosed or produced.

17 (a) Information in documentary form: (e.g., paper or
18 electronic documents and deposition exhibits, but excluding
19 transcripts of depositions or other pretrial or trial proceedings), the
20 designating party must affix the word "CONFIDENTIAL" to each

1 page that contains confidential material. If only a portion or portions
2 of the material on a page qualifies for protection, the producing party
3 also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

5 (b) Testimony given in deposition or in other pretrial
6 proceedings: the parties and any participating non-parties must
7 identify on the record, during the deposition or other pretrial
8 proceeding, all protected testimony, without prejudice to their right to
9 so designate other testimony after reviewing the transcript. Any party
10 or non-party may, within fifteen days after receiving the transcript of
11 the deposition or other pretrial proceeding, designate portions of the
12 transcript, or exhibits thereto, as confidential. If a party or non-party
13 desires to protect confidential information at trial, the issue should be
14 addressed during the pre-trial conference.

15 (c) Other tangible items: the producing party must affix in a
16 prominent place on the exterior of the container or containers in which
17 the information or item is stored the word “CONFIDENTIAL.” If
18 only a portion or portions of the information or item warrant
19 protection, the producing party, to the extent practicable, shall identify
20 the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an
2 inadvertent failure to designate qualified information or items does not,
3 standing alone, waive the designating party's right to secure protection under
4 this agreement for such material. Upon timely correction of a designation,
5 the receiving party must make reasonable efforts to ensure that the material
6 is treated in accordance with the provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any party or non-party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 designating party's confidentiality designation is necessary to avoid
11 foreseeable, substantial unfairness, unnecessary economic burdens, or a
12 significant disruption or delay of the litigation, a party does not waive its
13 right to challenge a confidentiality designation by electing not to mount a
14 challenge promptly after the original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to
16 resolve any dispute regarding confidential designations without court
17 involvement. Any motion regarding confidential designations or for a
18 protective order must include a certification, in the motion or in a declaration
19 or affidavit, that the movant has engaged in a good faith meet and confer
20 conference with other affected parties in an effort to resolve the dispute

1 without court action. The certification must list the date, manner, and
2 participants to the conference. A good faith effort to confer requires a face-
3 to-face meeting or a telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge
5 without court intervention, the designating party may file and serve a motion
6 to retain confidentiality under Local Civil Rule 7. (and in compliance with
7 Local Civil Rule 5(g), if applicable). The burden of persuasion in any such
8 motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (e.g., to harass or impose unnecessary
10 expenses and burdens on other parties) may expose the challenging party to
11 sanctions. All parties shall continue to maintain the material in question as
12 confidential until the court rules on the challenge.

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
14 PRODUCED IN OTHER LITIGATION

15 If a party is served with a subpoena or a court order issued in other litigation
16 that compels disclosure of any information or items designated in this action as
17 “CONFIDENTIAL,” that party must:

18 (a) promptly notify the designating party in writing and include a
19 copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena
21 or order to issue in the other litigation that some or all of the material

1 covered by the subpoena or order is subject to this agreement. Such
2 notification shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the designating party whose confidential material may be
5 affected.

6 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
8 confidential material to any person or in any circumstance not authorized under
9 this agreement, the receiving party must immediately (a) notify in writing the
10 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
11 all unauthorized copies of the protected material, (c) inform the person or persons
12 to whom unauthorized disclosures were made of all the terms of this agreement,
13 and (d) request that such person or persons execute the “Acknowledgment and
14 Agreement to Be Bound” that is attached hereto as Exhibit A.

15 9. **INADVERTENT PRODUCTION OF PRIVILEGED OR**
OTHERWISE PROTECTED MATERIAL

16 When a producing party gives notice to receiving parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the receiving parties are those set forth in Federal
19 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order or agreement that

1 provides for production without prior privilege review. The parties agree to the
2 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals,
5 each receiving party must return all confidential material to the producing party,
6 including all copies, extracts and summaries thereof. Alternatively, the parties
7 may agree upon appropriate methods of destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival
9 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
10 correspondence, deposition and trial exhibits, expert reports, attorney work
11 product, and consultant and expert work product, even if such materials contain
12 confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in
14 effect until a designating party agrees otherwise in writing or a court orders
15 otherwise.

16 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the
17 production of any documents, electronically stored information (ESI) or
18 information, whether inadvertent or otherwise, in this proceeding shall not, for the
19 purposes of this proceeding or any other federal or state proceeding, constitute a
20 waiver by the producing party of any privilege applicable to those documents,

1 including the attorney-client privilege, attorney work-product protection, or any
2 other privilege or protection recognized by law. This Order shall be interpreted to
3 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
4 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
5 shall serve to limit a party's right to conduct a review of documents, ESI or
6 information (including metadata) for relevance, responsiveness and/or segregation
7 of privileged and/or protected information before production. Information
8 produced in discovery that is protected as privileged or work product shall be
9 immediately returned to the producing party.

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
11 Order and provide copies to the parties.

12 DATED July 15, 2024.

13 *s/Mary K. Dimke*
14 MARY K. DIMKE
15 UNITED STATES DISTRICT JUDGE
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of Washington on _____ in the case of *Leticia Carter v. Benton County, et al.*, Cause No. 4:24-cv-05050-MKD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

DATED this _____ day of _____, 2024, at _____.
(City and State)

Signature

Print name